

Exhibit 42

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PALLADIUM BOOKS, INC.,)	
a Michigan corporation,)	Case No. 10-11859
Plaintiff,)	Hon. Julian Abele Cook, Jr.
)	Magistrate Judge Paul J. Komives
v.)	
)	
TRION WORLDS, INC.,)	
a Delaware corporation, and)	
TRION WORLD NETWORK, INC.,)	
a Delaware corporation,)	
Defendants.)	

**SPECIAL APPEARANCE FOR THE PURPOSE OF OPPOSING PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

DECLARATION OF ANDREW FOSSUM

I, Andrew Fossum, declare as follows:

1. I am an attorney with the law firm of Latham & Watkins LLP, counsel for Defendant Trion Worlds, Inc. in connection with this matter. I have personal knowledge of the information set forth below and, if called as a witness, could and would testify competently thereto.

2. Submitted herewith as **Exhibit 25** is a true and correct copy of the United States Patent and Trademark Office's (USPTO) Trademark Electronic Search System (TESS) record for mark Registration Number 1,699,796. Exhibit 25 evidences that, on March 20, 1990, Kevin Siembieda filed an intent-to-use (1B) application for RIFTS on books, and subsequently claimed a first use date of August 9, 1990. Ex. 25 at 1. The registration issued on July 7, 1992 (No. 1,699,796). *Id.* On April 12, 2003, that registration was cancelled by the USPTO. *Id.*

3. Submitted herewith as **Exhibit 26** is a true and correct copy of the USPTO TESS

record for Registration Number 2,889,353. Exhibit 26 evidences that Palladium Books filed another application for RIFTS on books on October 23, 2003, which eventually matured into a Registration Number 2,889,353 on September 28, 2004. Ex. 26 at 1. Palladium Books is asserting this registration in this action. *See* First Am. Ver. Cmpl. ¶ 47. Exhibit 26 evidences that, according to the USPTO records available as of May 31, 2010, Palladium Books had not yet satisfied the requirements under 15 U.S.C. § 1065 to obtain incontestable status for that registration. Ex. 26 at 1.

4. Submitted herewith as **Exhibit 27** is a true and correct copy of a USPTO Trademark Document Retrieval (TDR) document identified as Trademark Application, Principal Register, With Declaration for Registration Number 2,045,806. Exhibit 27 and the USPTO TESS record for Registration Number 2,045,806 evidence that, on March 4, 1996, Mr. Siembieda filed a use-based application for RIFTS on “Computer Software and Programs....” Ex. 27 at 1. That application contained a statement to the USPTO that “[a]pplicant is using the mark [RIFTS] in commerce on or in connection with the above identified goods/services” (*id.* at 1) and a specimen depicting three computer disks for a program called “RIFTS Game Master Companion” was submitted with the application. Submitted herewith as **Exhibit 28** is a true and correct copy of that specimen. The application claimed a first use date, presumably based on the “RIFTS Game Master Companion,” of May 1995. Ex. 27 at 1.

5. Submitted herewith as **Exhibit 29** is a true and correct copy of a USPTO TDR document identified as the First Office Action for Registration Number 2,045,806. Exhibit 29 evidences that, during prosecution, the USPTO determined that the description of the goods submitted by Mr. Siembieda required clarification and suggested a change to the class and an alternative description of “computer game software and computer game programs” if that

description was accurate. Ex. 29 at 3.

6. Submitted herewith as **Exhibit 30** is a true and correct copy of a USPTO TDR document identified as Response to Office Action 01 for Registration Number 2,045,806. Exhibit 30 evidences that Mr. Siembieda adopted the new description suggested by the USPTO “if accurate.” Ex. 30 at 1.

7. Submitted herewith as **Exhibit 31** is a true and correct copy of the registration certificate issued by the USPTO for Registration Number 2,045,806. Exhibit 31 evidences that based at least in part on the representations of use of the mark in commerce on the goods as described the USPTO issued a registration for Registration Number 2,045,806 on March 18, 1997.

8. Submitted herewith as **Exhibit 32** is a true and correct copy of a USPTO TDR document identified as Combined Declaration of Use and Incontestability [sic] and specimen submitted therewith for Registration Number 2,045,806. Exhibit 32 evidences that, on February 18, 2003, Palladium Books filed a combined renewal and incontestability declaration for this registration. Ex. 32 at 2. The filing contained a statement made under penalty of perjury that:

“The owner is using or is using through a related company the mark in commerce on or in connection with the goods/services identified above [computer game software and computer game programs], **as evidenced by the attached specimen(s) The mark has been in continuous use in commerce for five consecutive years after the date of registration . . . and is still using the mark in commerce on or in connection with all goods**

and/or services as identified above.”

Id. at 3 (emphasis added). The specimen submitted with the declaration appears to be a copy of the cover of the paperback book titled “RIFTS” released by Palladium Books in 1990. Ex. 32 at 6-7. Based on the fact that the specimen depicted appears to be a book, it is not clear how this specimen demonstrates use of the RIFTS mark on computer games or whether there is some other basis for the declaration of continuous use for a five year period of the RIFTS mark on computer games.

9. Submitted herewith as **Exhibit 33** is a true and correct copy of a USPTO TDR document identified as Trademark/Service Mark Application for Registration Number 3,036,181. Exhibit 33 evidence that Palladium Books filed an intent to use application for RIFTS for “Production of motion pictures, television programs, videotapes and DVDs involving science fiction and fantasy adventures,” which was recorded as being filed on July 9, 2002. Ex. 33.

10. Submitted herewith as **Exhibit 34** is a true and correct copy of a USPTO TDR document identified as Notice of Allowance for Registration Number 3,036,181. Exhibit 34 evidences that, on April 4, 2003, the USPTO issued a Notice of Allowance for Registration Number 3,036,181. Ex. 34.

11. Submitted herewith as **Exhibit 35** is a true and correct copy of a USPTO TDR document filing report for Registration Number 3,036,181. Exhibit 35 evidences that, after the Notice of Allowance was issued by the USPTO, Palladium Books filed four Extension Requests to extend its time to file a Statement of Use over the next three years. Ex. 35 at 1-2.

12. Submitted herewith as **Exhibit 36** is a true and correct copy of a USPTO TDR document identified as Trademark/Service Mark Statement of Use and specimen submitted therewith for Registration Number 3,036,181. Exhibit 36 evidences that, on October 14, 2005,

Palladium Books filed a Statement of Use with a specimen described as “Case cover for RIFTS animated motion picture trailer on DVD.” Ex. 36 at 2.

13. Submitted herewith as **Exhibit 37** is a true and correct copy of a USPTO TDR document identified as SOU Extension Request for Registration Number 3,036,181.

Concurrently with the Statement of Use filed on October 14, 2005, Palladium Books also filed a fifth Extension Request, explaining that a Statement of Use had been submitted by “[i]f the USPTO finds the Statement of Use to be fatally defective, the applicant requests additional time to file an amended or substitute Statement of Use.” Ex. 37 at 2.

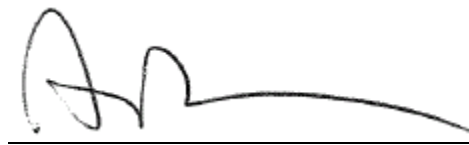
14. Submitted herewith as **Exhibit 38** is a true and correct copy of a USPTO TDR document identified as Trademark/Service Mark Application, Principal Register for Registration Number 3,213,944. Exhibit 38 evidences that, on October 20, 2004, Palladium Books filed an intent to use application for the mark PROMISE OF POWER (**not** “RIFTS: Promise of Power”) for several types of goods, including among other things “[v]ideo game cartridges; video game discs; video game interactive control floor pads or mats.” Ex. 38 1-2.

15. Submitted herewith as **Exhibit 39** is a true and correct copy of a USPTO TDR document identified as Trademark/Service Mark Statement of Use and specimen submitted therewith for Registration Number 3,213,944. Exhibit 39 evidences that Palladium filed a Statement of Use on June 19, 2006 for Registration Number 3,213,944, claiming a first use date of January 1, 2006 and submitting a specimen described as “[s]napshot of website advertising RIFTS: Promise of Power video game” as the basis for the sworn declaration attesting to use in commerce of the mark on the goods as described. Ex. 39 at 2 & 4.

16. Submitted herewith as **Exhibit 40** is a true and correct copy of the registration certificate issued by the USPTO for Registration Number 3,213,944. Exhibit 40 evidences that

based at least in part on the representations of use of the mark in commerce on the goods as described, the USPTO issued a registration for Registration Number 3,213,944 on February 27, 2007. Ex. 40.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct. This declaration was executed on June 1, 2010 in Irvine, California.

A handwritten signature in black ink, appearing to read 'Andrew Fossum', written over a horizontal line.

Andrew Fossum

by Special Appearance